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IP

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|
| 09/354,500 | 07/16/99 | SCHERMER | M GSIL-0109-PJ |

HM22/1012

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EXAMINER

ALLEN, M

ART UNIT

PAPER NUMBER

1631

5

DATE MAILED:

10/12/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/354,500

Applicant(s)

Schmer et al.

Examiner

Marianne P. Allen

Group Art Unit

1631

☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-18 is/are pending in the application

Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims 1-18 are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 4

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

Art Unit: 1631

The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Technology Center 1600, Group 1630, Art Unit 1631.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Shalon et al.

(Genome Research, July 1996).

Shalon et al. discloses a method of correcting cross-talk between two different fluorescent signals in a DNA microarray made on a glass surface and a computerized system therefore. The red and green hybridization intensities are corrected using experimentally determined coefficients. See in particular abstract; page 642, left column; and detection and analysis section on page 644. While the reference does not explicitly refer to calibration dye spots using a single pure dye, the reference appears to correct for cross talk in the same manner as set forth in the specification and as such it is reasonable to infer that single pure dye spots were used for calibration absent evidence to the contrary. Such calibration spots appear to have been routine in the art at the time of the invention. (See at least Schermer et al., U.S. Patent No. 6,075,613, at column 2, lines 20-50.)

Art Unit: 1631

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Schermer et al. (U.S. Patent No. 6,075,613), Chee et al. (U.S. Patent No. 5,795,716), Stern et al. (U.S. Patent No. 5,631,734), Lipshutz et al. (U.S. Patent No. 5,733,729), and Lockhart et al. (U.S. Patent No. 6,040,138) all disclose use of fluorescent dyes in DNA microarray technologies and computerized systems for the detection thereof.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marianne P. Allen, whose telephone number is (703) 308-0666. The examiner can normally be reached on Monday-Friday from 9:00 am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, Ph.D., can be reached on (703) 308-4028. Official FAX communications may be directed to either (703) 308-4242 or (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Marianne P. Allen
MARIANNE P. ALLEN
PRIMARY EXAMINER
~~GROUP 1631~~
AU1631